

Assembly Bill No. 2578

CHAPTER 360

An act to amend Sections 10271, 10271.1, 10295.6, and 10295.15 of the Insurance Code, relating to insurance.

[Approved by Governor September 16, 2014. Filed with
Secretary of State September 16, 2014.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2578, Dababneh. Insurance: disability insurance: life insurance: accelerated death benefit.

Existing law governs the business of insurance, and defines various types of insurance for these purposes, including life insurance and disability insurance. Existing law generally makes the requirements imposed on disability insurance contracts inapplicable to life insurance, endowment, and annuity contracts, or supplemental contracts thereto, that provide supplemental benefits in case of death or dismemberment or loss of sight by accident, operate to safeguard contracts against lapse, or give a special surrender benefit or an accelerated death benefit, as specified. Existing law requires that the supplemental benefit provide that the insurer may require that the insured provide written proof of occurrence or loss no less than 90 days after the termination of the period for which the insurer is liable, and, in the case of claim for any other occurrence or loss, within 90 days after the date of the occurrence or loss. Existing law also requires that supplemental benefits specify any applicable exclusions and limits those exclusions to, among other things, a condition or loss caused by engaging in an illegal occupation.

This bill would instead require that the supplemental benefit provide that the insurer may require, in the case of a claim for which the supplemental benefit provides any periodic payment contingent upon continuing occurrence or loss, that the insured provide written proof of occurrence or loss no less than 90 days after the termination of the period for which the insurer is liable, and, in the case of claim for any other occurrence or loss, that the insured provide written proof of occurrence or loss within 90 days after the date of the occurrence or loss. The bill would also include a condition or loss caused or substantially contributed to by engaging in aviation, other than as a fare-paying passenger, to the list of allowable exclusions to supplemental benefits.

Existing law provides that supplemental benefits that operate to safeguard life insurance contracts against lapse are defined as a waiver of premium benefit or a waiver of monthly deduction benefit, as applicable, in which the insurer waives the premium or monthly deduction for a life insurance contract when the insured becomes totally disabled, as defined by the

supplemental benefit, and in which the waiver continues until the end of the insured's disability, or for the period specified by the supplemental benefit, consistent with specified requirements. Under those requirements, the waiver of premium or monthly deduction benefit continues for the period specified by the supplemental benefit, but may not be less favorable to the insured than certain terms, including that if the insured's total disability begins before the insured attains 60 years of age, that the insurer waive all premiums or monthly deductions due for the period of the total disability, and if the total disability extends to the insured's attainment of 65 years of age, that the insurer waive all further premiums or monthly deductions due.

This bill would change the above terms by instead requiring the insurer, if the insured's total disability begins before the insured attains 60 years of age, to waive all premiums or monthly deductions due for the period that the insured continues to be totally disabled.

Existing law defines an accelerated death benefit as a provision, endorsement, or rider added to a life insurance policy that provides for the advance payment of any part of the death proceeds, payable upon the occurrence of a qualifying event, as provided. The insurer is required to provide the policyholder or certificate holder with a report, at least monthly, of any accelerated death benefits paid out during the prior month, an explanation of any changes to the policy or certificate, death benefits, and cash values on account of the benefits being paid out, and the amount of the remaining benefits that can be accelerated at the end of the prior month.

This bill would require the insurer to provide the report no less than one month after the payment of the benefit, and would delete the requirement that the report be provided on a monthly basis.

Existing law requires term life insurance policies to include a prominent statement on page one that the accelerated death benefit terminates with the policy.

This bill would instead require, if an accelerated death benefit is offered with an underlying term life insurance policy, that the accelerated death benefit include the required statement that the benefit terminates with the policy.

The people of the State of California do enact as follows:

SECTION 1. Section 10271 of the Insurance Code is amended to read:

10271. (a) Except as set forth in this section, this chapter shall not apply to, or in any way affect, provisions in life insurance, endowment, or annuity contracts, or contracts supplemental thereto, that provide additional benefits in case of death or dismemberment or loss of sight by accident, or that operate to safeguard those contracts against lapse, as described in subdivision (a) of Section 10271.1, or give a special surrender benefit, as defined in subdivision (b) of Section 10271.1, or an accelerated death benefit as defined in Article 2.1 (commencing with Section 10295), in the event that the owner,

insured, or annuitant, as applicable, meets the benefit triggers specified in the life insurance or annuity contract or supplemental contract.

(b) For the purposes of this section, the term “supplemental benefit” means a rider to or provision in a life insurance policy, certificate, or annuity contract that provides a benefit as set forth in subdivision (a).

(c) A supplemental benefit described in subdivision (a) shall contain all of the following provisions. However, an insurer, at its option, may substitute for one or more of the provisions a corresponding provision of different wording approved by the commissioner that is not less favorable in any respect to the owner, insured, or annuitant, as applicable. The required provisions shall be preceded individually by the appropriate caption, or, at the option of the insurer, by the appropriate individual or group captions or subcaptions as the commissioner may approve.

(1) A life insurance policy or annuity contract that contains a supplemental benefit shall provide that the contract, supplemental contract, and any papers attached thereto by the insurer, including the application if attached, constitute the entire insurance or annuity contract and shall also provide that no agent has the authority to change the contract or to waive any of its provisions. This provision shall be preceded individually by a caption stating “ENTIRE CONTRACT; CHANGES:” or other appropriate caption as the commissioner may approve.

(2) The supplemental benefit shall provide that reinstatement of the supplemental benefit shall be on the same or more favorable terms as reinstatement of the underlying life insurance policy or annuity contract. Following reinstatement, the insured and insurer shall have the same rights under reinstatement as they had under the supplemental benefit immediately before the due date of the defaulted premium, subject to any provisions endorsed in the rider or endorsement or attached to the rider or endorsement in connection with the reinstatement. This reinstatement provision shall be preceded individually by a caption stating “REINSTATEMENT:” or other appropriate caption as the commissioner may approve.

(3) A supplemental benefit subject to underwriting shall include an incontestability statement that provides that the insurer shall not contest the supplemental benefit after it has been in force during the lifetime of the insured for two years from its date of issue, and that the supplemental benefit may only be contested based on a statement made in the application for the supplemental benefit, if the statement is attached to the contract and if the statement was material to the risk accepted or the hazard assumed by the insurer. This provision shall be preceded individually by a caption stating “INCONTESTABILITY:” or other appropriate caption as the commissioner may approve.

(4) The supplemental benefit shall provide either that the insurer may accept written notice of claim at any time or that the insurer may require that written notice of claim be submitted by a due date that is no less than 20 days after an occurrence covered by the supplemental benefit, or commencement of any loss covered by the supplemental benefit, or as soon after the due date as is reasonably possible. Notice given by or on behalf of

the insured or the beneficiary, as applicable, to the insurer at the insurer's address or telephone number, or to any authorized agent of the insurer, with information sufficient to identify the insured, shall be deemed notice to the insurer. This provision shall be preceded individually by a caption stating "NOTICE OF CLAIM:" or other appropriate caption as the commissioner may approve.

(5) The supplemental benefit shall provide that the insurer, upon receipt of a notice of claim, shall furnish to the claimant those forms as are usually furnished by it for filing a proof of occurrence or a proof of loss. If the forms are not furnished within 15 days after giving notice, the claimant shall be deemed to have complied with the requirements of the supplemental benefit as to proof of occurrence or proof of loss upon submitting, within the time fixed by the supplemental benefit for filing proof of occurrence or proof of loss, written proof covering the character and the extent of the occurrence or loss. This provision shall be preceded individually by a caption stating "CLAIM FORMS:" or other appropriate caption as the commissioner may approve.

(6) The supplemental benefit shall provide that the insurer may require, in the case of a claim for which the supplemental benefit provides any periodic payment contingent upon continuing occurrence or loss, that the insured provide written proof of occurrence or proof of loss no less than 90 days after the termination of the period for which the insurer is liable, and, in the case of claim for any other occurrence or loss, that the insured provide written proof of occurrence or proof of loss within 90 days after the date of the occurrence or loss. Failure to furnish proof within the time required shall not invalidate or reduce the claim if it was not reasonably possible to give proof within the time, provided proof is furnished as soon as reasonably possible and, except in the absence of legal capacity, no later than one year from the time proof is otherwise required. This provision shall be preceded individually by a caption stating "PROOF OF LOSS:" or other appropriate caption as the commissioner may approve.

(7) The supplemental benefit shall provide that the insurer, at its own expense, shall have the right and opportunity to examine the person of the insured when and as often as the insurer may reasonably require during the pendency of a claim and to make an autopsy in case of death where it is not forbidden by law. This provision shall be preceded individually by a caption stating "PHYSICAL EXAMINATIONS:" or other appropriate caption as the commissioner may approve.

(d) The commissioner shall not approve any contract or supplemental contract for insurance or delivery in this state if the commissioner finds that the contract or supplemental contract does any of the following:

(1) Contains any provision, label, description of its contents, title, heading, backing, or other indication of its provisions that is unintelligible, uncertain, ambiguous, or abstruse, or likely to mislead a person to whom the supplemental benefit is offered, delivered, or issued.

(2) Constitutes fraud, unfair trade practices, or insurance economically unsound to the owner, insured, or annuitant, as applicable.

(3) Contains any actuarial information that is materially incomplete, incorrect, or inadequate.

(e) A supplemental benefit described in subdivision (a) shall not contain any title, description, or any other indication that would describe or imply that the supplemental benefit provides long-term care coverage.

(f) Commencing two years from the date of the issuance of the supplemental benefit, no claim for loss incurred or disability, as defined by the supplemental benefit, may be reduced or denied on the grounds that a disease or physical condition not excluded from coverage by name or specific description effective on the date of loss had existed prior to the effective date on the coverage of the supplemental benefit.

(g) With regard to supplemental benefits set forth in subdivision (a), the supplemental benefit shall specify any applicable exclusions, which shall be limited to the following:

(1) Condition or loss caused or substantially contributed to by any attempt at suicide or intentionally self-inflicted injury, while sane or insane.

(2) Condition or loss caused or substantially contributed to by war or an act of war, as defined in the exclusion provisions of the contract.

(3) Condition or loss caused or substantially contributed to by active participation in a riot, insurrection, or terrorist activity.

(4) Condition or loss caused or substantially contributed to by committing or attempting to commit a felony.

(5) Condition or loss caused or substantially contributed to by voluntary intake of either:

(A) Any drug, unless prescribed or administered by a physician and taken in accordance with the physician's instructions.

(B) Poison, gas, or fumes, unless they are the direct result of an occupational accident.

(6) Condition or loss in consequence of the insured being intoxicated, as defined by the jurisdiction where the condition or loss occurred.

(7) Condition or loss caused or substantially contributed to by engaging in an illegal occupation.

(8) Condition or loss caused or substantially contributed to by engaging in aviation, other than as a fare-paying passenger.

(h) If the commissioner notifies the insurer, in writing, that the filed form or actuarial information does not comply with the requirements of law and specifies the reasons for his or her opinion, it is unlawful for an insurer to issue any policy in that form.

SEC. 2. Section 10271.1 of the Insurance Code is amended to read:

10271.1. (a) (1) Supplemental benefits that operate to safeguard life insurance contracts against lapse are defined as a waiver of premium benefit or a waiver of monthly deduction benefit, as applicable, in which the insurer waives the premium or monthly deduction for a life insurance contract when the insured becomes totally disabled, as defined by the supplemental benefit, and where the waiver continues until the end of the insured's disability, or for the period specified by the supplemental benefit, consistent with paragraph (5).

(2) For purposes of this subdivision, total disability shall not be less favorable to the insured than the following:

(A) During the first 24 months of total disability, the insured is unable to perform with reasonable continuity the substantial and material duties of his or her job due to sickness or bodily injury.

(B) After the first 24 months of total disability, the insured, due to sickness or bodily injury, is unable to engage with reasonable continuity in any other job in which he or she could reasonably be expected to perform satisfactorily in light of his or her age, education, training, experience, station in life, or physical and mental capacity.

(3) The definition of total disability may also include presumptive total disability, such as the insured's total and permanent loss of sight of both eyes, hearing of both ears, speech, the use of both hands, both feet, or one hand and one foot.

(4) The insurer may require total disability to continue for an uninterrupted period of time specified by the supplemental benefit, or the insurer may allow separate periods of disability to be combined.

(5) The waiver of premium or monthly deduction benefit shall continue for the period specified by the supplemental benefit, but shall not be less favorable to the insured than the following:

(A) If the insured's total disability begins before the insured attains 60 years of age, the insurer shall waive all premiums or monthly deductions due for the period that the insured continues to be totally disabled.

(B) If the insured's total disability begins after the age specified in subparagraph (A), the insurer shall waive all premiums or monthly deductions due for the period that the insured continues to be totally disabled up to 65 years of age.

(6) In addition to the permissible exclusions listed in subdivision (g) of Section 10271, the insurer may exclude a total disability occurring after the policy anniversary or supplemental contract anniversary, as applicable and as defined by the supplemental benefit, on which the insured attains a specified age of no less than 65 years.

(b) "Special surrender benefit" is defined as a "waiver of surrender charge benefit" wherein the insurer waives the surrender charge usually charged for a withdrawal of funds from the cash value of a life insurance contract or the account value of an annuity contract if the owner, insured, or annuitant, as applicable, meets any of the following criteria:

(1) Develops any medical condition where the owner's, insured's, or annuitant's life expectancy is expected to be less than or equal to a limited period of time that shall not be restricted to a period of less than 12 months or greater than 24 months.

(2) Is receiving, as prescribed by a physician, registered nurse, or licensed social worker, home care or community-based services, as defined in subdivision (a) of Section 10232.9, or is confined in a skilled nursing facility, convalescent nursing home, or extended care facility, which shall not be defined more restrictively than as in the Medicare program, or is confined in a residential care facility or residential care facility for the elderly, as

defined in the Health and Safety Code. Out-of-state providers of services shall be defined as comparable in licensure and staffing requirements to California providers.

(3) Has any medical condition that would, in the absence of treatment, result in death within a limited period of time, as defined by the supplemental benefit, but that shall not be restricted to a period of less than six months.

(4) Is totally disabled, as follows:

(A) During the first 24 months of total disability, the owner, insured, or annuitant, as applicable, is unable to perform with reasonable continuity the substantial and material duties of his or her job due to sickness or bodily injury.

(B) After the first 24 months of total disability, the owner, insured, or annuitant, as applicable, due to sickness or bodily injury, is unable to engage with reasonable continuity in any other job in which he or she could reasonably be expected to perform satisfactorily in light of his or her age, education, training, experience, station in life, or physical and mental capacity.

(C) The definition of total disability may also include presumptive total disability, such as the insured's total and permanent loss of sight of both eyes, hearing of both ears, speech, the use of both hands, both feet, or one hand and one foot.

(D) The insurer may require the total disability to continue for an uninterrupted period of time specified by the supplemental benefit, or the insurer may allow separate periods of disability to be combined.

(5) Has a chronic illness as defined pursuant to either subparagraph (A) or (B):

(A) Either of the following:

(i) Impairment in performing two out of seven activities of daily living, as set forth in subdivisions (a) and (g) of Section 10232.8, meaning the insured needs human assistance, or needs continual substantial supervision.

(ii) The insured has an impairment of cognitive ability, meaning a deterioration or loss of intellectual capacity due to mental illness or disease, including Alzheimer's disease or related illnesses, that requires continual supervision to protect oneself or others.

(B) Either of the following:

(i) Impairment in performing two out of six activities of daily living as described in subdivisions (b), (d), (e), and (f) of Section 10232.8 due to a loss of functional capacity to perform the activity.

(ii) Impairment of cognitive ability, meaning the insured needs substantial supervision due to severe cognitive impairment, as described in subdivisions (b), (d), and (e) of Section 10232.8.

(6) Has become involuntarily or voluntarily unemployed.

(c) The term "supplemental benefit" means a rider to or provision in a life insurance policy, certificate, or annuity contract that provides a benefit as set forth in subdivision (a) of Section 10271.

SEC. 3. Section 10295.6 of the Insurance Code is amended to read:

10295.6. (a) When a policyholder or certificate holder requests an acceleration of death benefits, the insurer shall send a statement to the policyholder or certificate holder and irrevocable beneficiary showing any effect that the payment of the accelerated death benefit would have on the policy's cash value, accumulation account, death benefit, premium, policy loans, and policy liens. The statement shall disclose that receipt of accelerated death benefit payments may adversely affect the recipient's eligibility for Medicaid or other government benefits or entitlements. In addition, receipt of an accelerated death benefit payment may be taxable and assistance should be sought from a personal tax adviser. When a previous disclosure statement becomes invalid as a result of an acceleration of the death benefit, the insurer shall send a revised disclosure statement to the policyholder or certificate holder and irrevocable beneficiary.

(b) The accelerated death benefit shall be effective not more than 30 days following the effective date of the policy provision, rider, endorsement, or certificate.

(c) If the insurer charges a separate premium for the accelerated death benefit, then the insurer may also offer a waiver of premium benefit as defined in subdivision (a) of Section 10271.1. At the time the waiver of the accelerated death benefit premium benefit is claimed, the insurer shall explain any continuing premium requirement to keep the underlying policy in force.

(d) An insurer shall not unfairly discriminate among insureds with different qualifying events covered under the policy or among insureds with similar qualifying events covered under the policy. An insurer shall not apply further conditions on the payment of the accelerated death benefits other than those conditions specified in the accelerated death benefit.

(e) No less than one month after payment of an accelerated death benefit, the insurer shall provide the policyholder or certificate holder with a report of any accelerated death benefits paid out during the prior month, an explanation of any changes to the policy or certificate, death benefits, and cash values on account of the benefits being paid out, and the amount of the remaining benefits that can be accelerated at the end of the prior month. The insurer may use a calendar month or policy or certificate month.

(f) The conversion benefit available to group certificate holders on termination of employment pursuant to paragraph (2) of subdivision (a) of Section 10209 shall include a benefit comparable to the accelerated death benefit. This requirement may be satisfied by an individual policy or certificate. This requirement, subject to the approval of the commissioner, may be satisfied by arrangement with another insurer to provide the required coverage.

(g) When payment of an accelerated death benefit results in a pro rata reduction in cash value, the payment may be applied toward repaying a portion of the loan equal to a pro rata portion of any outstanding policy loans if disclosure of the effect of acceleration upon any remaining death benefit, cash value or accumulation account, policy loan, and premium payments, including a statement of the possibility of termination of any

remaining death benefit, is provided to the policyholder or certificate holder. The policyholder or certificate holder shall provide written consent authorizing any other arrangement for the repayment of outstanding policy loans.

SEC. 4. Section 10295.15 of the Insurance Code is amended to read:

10295.15. (a) Except at the request of the policyholder or contractholder, all accelerated death benefit provisions or supplemental contracts shall be renewable for the life of the underlying life insurance policy, provided the premiums are timely paid. The statement shall be prominently displayed on the first page of the accelerated death benefit policy or rider.

(b) If an accelerated death benefit is offered with an underlying term life insurance policy, the accelerated death benefit shall include a prominent statement on page one that the accelerated death benefit terminates with the policy.